

Civil No. 1:18-CV-00007-MR-DLH

adequately state a claim and fail to provide Trans Union with adequate notice of the basis of the claims asserted against it.

STATEMENT OF FACTS

Trans Union is a consumer reporting agency as the term is defined in the FCRA. 15 U.S.C. § 1681a(f). Complaint at ¶ 37. Plaintiff alleges she made two written requests for her “full consumer file disclosure.” Complaint at ¶¶ 13 and 17. Plaintiff further alleges Trans Union sent and she received correspondence requesting proper identification in response to both requests for a “full consumer file disclosure.” Complaint at ¶¶ 14 and 21. The letters from Trans Union to Plaintiff, which are attached to the Complaint, stated:

We have received your request for a copy of your TransUnion Credit Report. However, the current mailing address you provided is not listed in our records. In order for TransUnion to process your request and to protect the confidentiality of your credit report, please complete the attached form and submit verification of your current address. Acceptable forms of verification include copies of two (2) of the qualifying documents listed below.

If you would prefer, you may visit us online at www.transunion.com to view a copy of your credit report.

Complaint, Exhibit 3.

Plaintiff does not allege any general damages. *See* Complaint. Plaintiff seeks statutory damages of \$1,000 plus interest, attorney’s fees and costs. Complaint Prayer for Relief of Count II.

LEGAL ARGUMENT AND AUTHORITIES

I. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint when the allegations fail to set forth facts which, if true, would entitle plaintiff to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). A complaint must raise the right to relief beyond the speculative level, and plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

“Although a court must liberally construe a pro se plaintiff's allegations, it ‘cannot ignore a clear failure to allege facts’ that set forth a cognizable claim.” *Campbell v. Wells Fargo Bank, N.A.*, 73 F. Supp. 3d 644, 648 (E.D.N.C. 2014)(citing *Johnson v. BAC Home Loans Servicing, LP*, 867 F. Supp. 2d 766, 776 (E.D.N.C. 2011). While courts considering a Rule 12(b)(6) motion generally accept all well-pleaded allegations in a complaint as true, mere conclusory allegations, absent supporting factual averments, are not sufficient to state a claim upon which relief can be granted. See *Hinton v. Trans Union, LLC*, 654 F. Supp. 2d 440, 451 (E.D. Va. 2009) (granting motion to dismiss 15 U.S.C 1681g claim because allegations were merely “unadorned, the defendant-unlawfully-harmed-me accusations” (citation omitted)); *Jackson v. Warning*, No. PJM 15-1233, 2016 U.S. Dist. LEXIS 172589, at *2 (D. Md. Dec. 13, 2016) (dismissing *pro se* FCRA claims); *Kant v. Bregman*, 84 Fed. App’x. 355 (4th Cir. 2004) (affirming dismissal of civil rights claim because plaintiff’s only asserted conclusory allegations unsupported by any factual averments); *Mason v. Potter*, 81 Fed. App’x. 767 (4th Cir. 2003) (same); *Cochran v. Morris*, 73 F.3d 1310, 1317 (4th Cir. 1996) (cannot rely merely on conclusory allegations); *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994) (must present more than naked allegations to survive dismissal); *Jones v. Duncan*, 2009 U.S. Dist. LEXIS 93328 (D.N.C. 2009) (case dismissed because plaintiff did not allege a single fact to overcome her showings that no violations occurred).

II. Plaintiff’s Complaint fails to plead facts sufficient to support a claim for relief

Plaintiff’s Complaint is subject to dismissal under Rule 12(b)(6) because it fails to state facts sufficient to support a claim for relief under the FCRA. Plaintiff alleges that Trans Union “failed to comply with Plaintiff’s multiple requests for a full consumer file disclosure pursuant to 15 U.S.C. § 1681g(a)(1).” See Complaint at ¶ 38. Section 1681g(a)(1) of the FCRA states that upon request, a consumer reporting agency shall disclose “[a]ll information in the consumer’s

file at the time of the request, except that (A) if the consumer requests that her social security number be masked the CRA shall do so, and (B) the CRA is not required to disclose information about credit scores “or any other risk scores or predictors relating to the consumer.” 15 U.S.C. § 1681g(a)(1). However, Trans Union is obligated by § 1681h(a)(1) to “require, as a condition of making the disclosure required under section 1681g of this title that the consumer furnish proper identification.” 15 U.S.C. § 1681h(a)(1). To prevail on a claim based on § 1681g(a)(1), then, a plaintiff must adequately plead that the consumer provided proper identification with a request for disclosure and that the CRA failed to provide the consumer with the consumer file.

III. Plaintiff admits Trans Union requested proper identification to verify her current address

“[A] condition precedent to the consumer reporting agency’s making such a disclosure is that ‘the consumer furnish proper identification’” *Ogbon v. Beneficial Credit Servs., Inc.*, No. 10 CV 3760, 2013 U.S. Dist. LEXIS 50816 *10 (S.D. N.Y. Apr. 8, 2013) (citing 15 U.S.C. § 1681h(a)(1)). “These verification procedures are crucial because they accommodate a consumer’s right to access his personal credit information, while at the same time shielding that confidential information from impermissible third-party disclosure.” *Garland v. Equifax*, No. 15-C-50305, 2017 U.S. Dist. LEXIS 217553 *10 (N.D. Ill. Oct. 27, 2017).

Plaintiff’s sole allegation against Trans Union is that she did not receive her “full consumer file disclosure” as requested. *See* Complaint ¶¶ 13-14. Plaintiff states that she sent Trans Union a request for her full consumer file disclosure. *See* Complaint ¶ 13. Plaintiff concedes that Trans Union timely responded and asked for proper identification to verify her current address. *See* Complaint ¶ 14 Exhibit 1. She sent a “second and final request for a **full consumer file disclosure**” to Trans Union and cited 15 U.S.C. § 1681g(a) for categories of information specifically requested. Complaint ¶ 17 (emphasis in original). Trans Union timely

responded with correspondence again asking for proper identification to provide proof of address. *Id.* at ¶ 21 Exhibit 3.

The letters from Trans Union, attached to the Complaint, state: “the current mailing address you provided is not listed in our records. In order for TransUnion to process your request and to protect the confidentiality of your credit report please complete the attached form and submit verification of your current address.” Complaint, Exhibits 1 and 3. The letter went on to specify the acceptable forms of verification in addition to an alternative method of going online. Plaintiff does not and cannot allege she provided Trans Union with the requested qualifying documents. Trans Union’s letters requesting proper identification before releasing the requested consumer file disclosure complied with the FCRA.

Accordingly, Plaintiff has failed to allege sufficient facts to support any cause of action against Trans Union under the FCRA, and the Court should dismiss her claim under Rule 12(b)(6).

WHEREFORE, PREMISES CONSIDERED, Defendant Trans Union respectfully requests that this Honorable Court dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(6) and for such other relief as the Court deems necessary.

Respectfully submitted,

This 19th day of February, 2018.

YOUNG MOORE AND HENDERSON, P.A.

BY: /s/ Kelly S. Brown

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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I also certify that on February 19, 2018, I also served the foregoing document via Certified Mail with the United States Postal Service on the following:

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